

122 FERC ¶ 61,009  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Philip D. Moeller,  
and Jon Wellenghoff.

San Diego Gas & Electric Co. Docket Nos. EL00-95-198

v.

Sellers of Energy and Ancillary Services

Investigation of Practices of the California Independent System Operator and the California Power Exchange EL00-98-182

Puget Sound Energy Inc. EL01-10-025

v.

All Jurisdictional Sellers of Energy and/or Capacity at  
Wholesale Into Electric Energy and/or Capacity Markets  
in the Pacific Northwest, Including Parties to the  
Western System Power Pool Agreement

Investigation of Anomalous Bidding Behavior and Practices in Western Markets IN03-10-029

Fact-Finding Investigation Into Possible Manipulation of Electric and Natural Gas Prices PA02-2-043

PacifiCorp EL03-163-004  
EL03-163-005

PPM Energy, Inc. (f/k/a PacifiCorp Power Marketing, Inc.) EL03-197-008

California Independent System Operator Corporation ER03-746-006

ORDER DENYING REHEARING

(Issued January 4, 2008)

1. This order addresses requests for rehearing of two Commission orders: one issued March 8, 2004<sup>1</sup> that approved an Agreement and Stipulation (Gaming Settlement) submitted by PacifiCorp and Commission Trial Staff; and the other issued June 21, 2007<sup>2</sup> that approved a Joint Offer of Settlement and Settlement and Release of Claims Agreement (Global Settlement) submitted by PacifiCorp<sup>3</sup> and the California Parties.<sup>4</sup> Port of Seattle, Washington (Port of Seattle) requests rehearing of both orders. The Commission will deny rehearing of the *Gaming Settlement Order* and the *Global Settlement Order*, as discussed below.

## **I. Background**

2. In 2000, the Commission instituted formal hearing procedures under the Federal Power Act (FPA) to investigate, among other things, the justness and reasonableness of rates of public utility sellers into the CAISO and CalPX markets during a specific period (Docket Nos. EL00-95-000 and EL00-98-000). Also in 2000, the Commission ordered an evidentiary hearing to help determine whether there may have been unjust and unreasonable charges for spot market bilateral sales in the Pacific Northwest during a specific period (Docket No. EL01-10-000). In 2002, the Commission directed Staff to commence a fact-finding investigation of manipulation of electric energy and natural gas prices in the west (Docket No. PA02-2-000). In 2003, the Commission directed its Office of Market Oversight and Investigation (OMOI) to conduct an investigation to determine whether individual market participants may have violated a prohibition against anomalous market behavior (Docket No. IN03-10-000). Also in 2003, the Commission

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<sup>1</sup> *PacifiCorp*, 106 FERC ¶ 61,235 (2004) (*Gaming Settlement Order*).

<sup>2</sup> *San Diego Gas & Elec. Co v. Sellers of Energy & Ancillary Serv.*, 119 FERC ¶ 61,296 (2007) (*Global Settlement Order*).

<sup>3</sup> For the purposes of the Global Settlement, PacifiCorp means the entity legally called PacifiCorp, which sold power to the California Independent System Operator Corporation (CAISO) under two Scheduling Coordinator Identification numbers (SCIDs): PAC1 (BAID 1006) and PAC3 (BAID 3563). Reference to PacifiCorp does not include PacifiCorp Power Marketing, Inc. (BAID 3174), now known as PPM Energy, Inc.

<sup>4</sup> The California Parties consist of Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, the People of the State of California, *ex rel.* Edmund G. Brown Jr., Attorney General, the California Electricity Oversight Board, the California Public Utilities Commission, and the California Department of Water Resources acting solely under the authority and powers created by Assembly Bill 1 of the First Extraordinary Session of 2001-2002, codified in Sections 80000 through 80270 of the California Water Code.

instituted the *Gaming and Partnership Proceedings* by issuing concurrent orders<sup>5</sup> directing a number of entities, including PacifiCorp, to show cause why they had not participated in activities that constitute gaming and/or anomalous market behavior in violation of the CAISO and CalPX tariffs (*see* Docket Nos. EL03-137-000, *et al.* and EL03-180-000, *et al.*).<sup>6</sup>

**A. Gaming Settlement**

3. On March 8, 2004, in Docket No. EL03-163-000, the Commission approved the contested Gaming Settlement between Trial Staff and PacifiCorp, which included a settlement amount of \$67,745 for PacifiCorp's participation in alleged gaming practices. The Commission stated that the objections to the Gaming Settlement went to the scope of the proceeding and were essentially requests for rehearing of the *Gaming Order*. The Commission found that, given its determination in the rehearing of the *Gaming Order* not to expand the scope of the proceeding, the provision in Article IV, section 4.3 of the Gaming Settlement, releasing PacifiCorp from further scrutiny of its trading activities in California during the period January 1, 2000 through June 20, 2001, was reasonable. The Commission concluded that the Gaming Settlement constituted a reasonable resolution of the proceeding and reasonably addressed and resolved all charges against PacifiCorp that were set for hearing in the *Gaming Order*. Also, the Commission explained that since the settlement amount represented total revenues, rather than profits, it offered more than could be achieved in litigation.

4. Timely requests for rehearing of the *Gaming Settlement Order* were filed by Port of Seattle and the California Parties.<sup>7</sup> However, the California Parties withdrew their

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<sup>5</sup> *See American Electric Power Serv. Corp.*, 103 FERC ¶ 61,345 (2003) (*Gaming Order*) and *Enron Power Mktg, Inc. and Enron Energy Serv.*, 103 FERC ¶ 61,346 (2003) (*Partnership Order*), *reh'g denied*, 106 FERC ¶ 61,020 (2004) (collectively, *Gaming and Partnership Proceedings*).

<sup>6</sup> PacifiCorp was initially named as a respondent in both the Gaming Proceeding, Docket No. EL03-163-000, and the Partnership Proceeding, Docket No. EL03-197-000. However, PacifiCorp was removed as the named party in the Partnership Proceeding and substituted with "PPM Energy, Inc." *See Enron Power Marketing, Inc. and Enron Energy Services, Inc. et al.*, 103 FERC ¶ 61,346 (2003). *See also Order Granting Motions to Change Designations of Show Cause Respondents*, 104 FERC ¶ 61,222 (2003).

<sup>7</sup> For the purpose of the rehearing request, the California Parties were the People of the State of California *ex rel.* Bill Lockyer, Attorney General, the California Electricity Oversight Board, the California Public Utilities Commission, Pacific Gas and Electric Company, and Southern California Edison Company.

request for rehearing of the *Gaming Settlement Order* pursuant to the terms of the Global Settlement.<sup>8</sup>

## **B. Global Settlement**

5. On June 21, 2007, the Commission approved the contested Global Settlement submitted by PacifiCorp and the California Parties. The Global Settlement resolved matters and claims related to PacifiCorp that arose from events and transactions in the western energy markets during the period January 1, 2000 through June 20, 2001 (Settlement Period). Under the Global Settlement terms, PacifiCorp provided the California Parties with settlement proceeds totaling \$27,975,973, and out of this amount, PacifiCorp paid cash consideration of \$16,400,000 by transferring such funds into escrow accounts established by the California Parties. PacifiCorp also assigned to the California Parties its rights and claims to receivables from the CalPX and the CAISO for sales of energy and ancillary services in the California markets during the Settlement Period; PacifiCorp's unpaid receivables totaled \$11,575,973.

6. The Global Settlement permitted entities that directly sold energy to or purchased energy from the CAISO or the CalPX during part or all of the Settlement Period to join the Global Settlement, and allocated proceeds among the Settling Participants according to an allocation matrix. The allocated proceeds were to be paid out to Settling Participants from one of the escrow accounts established by the California Parties. Entities that did not elect to join the Global Settlement were deemed Non-Settling Participants and the language addressing their treatment stated that "no claims addressed in this Agreement shall be deemed settled as to Non-Settling Participants, and . . . all defenses, claims, or allegations made or asserted, or that could be made or asserted by the Parties and Additional Settling Participants against Non-Settling Participants are unaffected by this Agreement . . . ." The Global Settlement also provided that the California Utilities<sup>9</sup> are responsible for the payment of any refunds by PacifiCorp to Non-Settling Participants in the related Commission proceedings.

7. The Commission found the Global Settlement fair and reasonable and in the public interest, and approved it. The Global Settlement became fully effective on July 21, 2007, the date the Commission issued the *Global Settlement Order*. Only Port of Seattle filed a request for rehearing.

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<sup>8</sup> See Global Settlement section 4.4; *see also* California Parties' July 13, 2007 Notice of Withdrawal.

<sup>9</sup> Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company.

## II. Port of Seattle's Requests for Rehearing

### A. Gaming Settlement Order

8. Port of Seattle argues that the Commission erred by approving the Gaming Settlement in contravention of Rule 602 of the Commission's Rules of Practice and Procedure, which requires that contested settlements cannot be certified if there are material issues of fact in dispute and an inadequate record upon which to resolve such disputes. Port of Seattle contends that the record demonstrates that there are material facts in dispute and the issues cannot be resolved without an evidentiary hearing.

9. Port of Seattle cites the Commission's *Gaming Order*, in which the presiding judge was instructed to quantify the full extent to which the named entities may have been unjustly enriched as a result of their engaging in gaming practices. The Commission further required that any and all such unjust profits from the period January 1, 2000 to June 20, 2001 be disgorged in their entirety.<sup>10</sup> According to Port of Seattle, the California Parties' September 30, 2003 initial comments opposing the Gaming Settlement included evidence of PacifiCorp's engagement in gaming practices. However, Port of Seattle avers, the Gaming Settlement between PacifiCorp and Trial Staff does not address all of the factual evidence of PacifiCorp's actions, and this evidence was also not deemed in the presiding judge's certification of the Gaming Settlement to reveal disputed issues of material fact. Port of Seattle argues that there is not an adequate record to support the Commission's approval of the Gaming Settlement, and that it was entered into prior to any opportunity for discovery by any intervenor.

10. Port of Seattle also argues that the *Gaming Order*, which established the individual Gaming and/or Partnership "show cause" proceedings, is not predicated on a record because the investigation in Docket No. PA02-2-000 does not constitute a record. Noting that the scope and specifics of Staff's PA02-2-000 investigation are unclear, that the investigation was closed to all parties and therefore did not constitute an evidentiary proceeding, and that the Commission based the *Gaming Order* on Staff's Final Report that resulted from the investigation, Port of Seattle argues that the show cause proceedings (i.e., the *Gaming and Partnership Proceedings*), are based on unsupported conclusions reached in the Final Report. Thus, contends Port of Seattle, the Commission's approval of contested settlements, resulting from the PA02-2-000 investigation, is arbitrary and capricious.

11. Port of Seattle further avers that the Commission's approval of the Gaming Settlement does not take into account positions of the intervening parties, none of whom supported the Gaming Settlement. Port of Seattle notes that the Gaming Settlement was

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<sup>10</sup> Port of Seattle's April 7, 2004 Reh'g Request, at 5 (*citing Gaming Order*, 103 FERC ¶ 61,345, at P 71).

only between PacifiCorp and Trial Staff, and that all intervening parties opposed it. As Port of Seattle concludes, “approval of a settlement that does not include any other party and for which issues exist that cannot be resolved without a hearing does not constitute reasoned decision-making.”<sup>11</sup>

### **Commission Determination**

12. We deny Port of Seattle’s request for rehearing of the *Gaming Settlement Order*. Under Rule 602(h)(1)(i) of the Commission’s Rules of Practice and Procedure, the Commission can approve a contested settlement “if the record contains substantial evidence upon which to base a reasoned decision or the Commission determines there is no genuine issue of material fact.”<sup>12</sup> Courts have confirmed the Commission’s authority to approve contested settlements, so long as the proposal will establish just and reasonable rates.<sup>13</sup> The Commission may approve contested settlements under any one of four approaches: (1) by rendering a binding merits decision on each contested issue; (2) by approving the settlement based on a finding that the overall settlement as a package is just and reasonable; (3) by determining that the benefits of the settlement outweigh the nature of the objections, and the interests of the contesting party are too attenuated; and (4) by approving the settlement as uncontested for the consenting parties, and severing the contesting parties to allow them to litigate the issues raised.<sup>14</sup>

13. The Commission strongly favors settlements, particularly in cases that are highly contested and complex.<sup>15</sup> The Gaming Settlement resolves issues raised in the *Gaming Order* that were difficult and contentious, the resolution of which will bring needed stability to the industry, end protracted litigation, and thereby benefit customers.

14. Moreover, the contested Gaming Settlement is just and reasonable. In instituting the Gaming Proceeding, the Commission identified particular conduct in a particular time period that should be investigated, and exercised its discretion to pursue certain matters

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<sup>11</sup> Port of Seattle’s Reh’g Request, at 8.

<sup>12</sup> 18 C.F.R. § 385.602(h)(1)(i) (2007).

<sup>13</sup> See *New Orleans Public Service, Inc. v. FERC*, 659 F.2d 509, 511-12 (5th Cir. 1981) (citing *Placid Oil Co. v. FPC*, 483 F.2d 880, 893 (5th Cir. 1973), *aff’d sub nom. Mobil Oil Corp. v. FPC*, 417 U.S. 283, 312-13 (1974)).

<sup>14</sup> *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345, at 62,342-44 (1998), *reh’g denied*, 87 FERC ¶ 61,110, *reh’g denied*, 88 FERC ¶ 61,168 (1999).

<sup>15</sup> *Idaho Power*, 109 FERC ¶ 61,308, at P 5 (2004); see also, e.g., *Devon Power LLC*, 115 FERC ¶ 61,340, at P 66 (2006).

and not others.<sup>16</sup> The Commission indicated that the monetary remedy would be “disgorgement of unjust profits.” The Gaming Settlement provides for payments that reflect total revenues for PacifiCorp’s alleged gaming activities, not just unjust profits. The Gaming Settlement therefore provides for more relief than would result if litigation were to continue; total revenues, by definition, would exceed any profits (just and unjust both) from the transactions at issue. The record before us, identified and explained at length in the presiding judge’s certification<sup>17</sup> and laid out in even greater length in the underlying pleadings and other documents referenced by the presiding judge, provided a more than sufficient basis to find that the Gaming Settlement represented a reasonable resolution with regard to PacifiCorp’s actions at issue. The fact that intervening parties opposed the Gaming Settlement does not detract from our finding that the Gaming Settlement as a package is just and reasonable, and that the benefits of such a settlement outweigh the nature of intervenors’ objections.

## **B. Global Settlement Order**

15. Port of Seattle requests rehearing of the Global Settlement Order on four accounts. We will address each in turn.

### **1. Improper Distribution of Settlement Proceeds**

16. Port of Seattle argues that the distribution of funds pursuant to the Global Settlement, prior to and outside of the allocation phase of the Gaming and Partnership Proceedings, constitutes an unreasonable and unsupported departure from “the law of the case,” and unduly discriminates against non-settling parties.<sup>18</sup>

17. Port of Seattle contends that the Global Settlement distributes proceeds in a manner that is inconsistent with the Commission’s September 24, 2003 Order<sup>19</sup> and subsequent related orders. Port of Seattle states that these Commission orders provided that the allocations of settlements and amounts to be rewarded were to be determined after the conclusion of the liability phase of the Gaming and Partnership Proceedings, and that, by now allocating settlement proceeds, the Global Settlement violates the spirit and intent of the September 24, 2003 Order. This is because the September 24, 2003 Order was intended to permit all parties in the *Gaming and Partnership Proceedings* to have a fair opportunity in the allocation phase to set forth their claims to the proceeds resulting

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<sup>16</sup> See *Gaming Order*, 103 FERC ¶ 61,345.

<sup>17</sup> *PacifiCorp*, 105 FERC ¶ 63,043 (2003).

<sup>18</sup> Port of Seattle’s July 20, 2007 Reh’g Request at 27.

<sup>19</sup> *Id.* (citing *American Electric Power Serv. Corp.*, 104 FERC ¶ 61,323 (2003) (September 24, 2003 Order)).

from the liability phase. Port of Seattle avers that the Commission erred in concluding that the right to assert a claim to a portion of the funds available in the allocation phase is not affected by a decision that alters the amount of funds available for those asserting claims in the allocation phase.

### **Commission Determination**

18. We will deny rehearing on this issue. The Commission's approval of the Global Settlement does not affect the allocation of funds in the *Gaming and Partnership Proceedings*, particularly with respect to funds obtained from PacifiCorp. The Gaming Settlement that PacifiCorp reached with Commission Trial Staff, which included a settlement amount of \$67,745, resolved all charges against PacifiCorp that were set for hearing in the *Gaming Order*.<sup>20</sup> Per the terms of the Gaming Settlement (and as Port of Seattle notes in its rehearing request<sup>21</sup>), PacifiCorp was to pay a settlement amount of \$67,745 into a Deposit Fund Account within thirty (30) days of Commission approval of the Settlement.<sup>22</sup> The terms of the Global Settlement neither affect nor allocate the funds already set aside in the escrow account(s) established in the Gaming Proceeding. Rather, the Global Settlement is funded by a cash payment from PacifiCorp and by unpaid receivables held by the CalPX. Nowhere does the Global Settlement contemplate removing or allocating the \$67,745 from the Deposit Fund Account established in the Gaming Proceeding.

### **2. Material Facts Remain in Dispute**

19. Port of Seattle argues that the Commission has not complied with the Federal Power Act (FPA) or Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2007), in making a determination that the Global Settlement is fair and reasonable and in the public interest because there are disputed facts with respect to the financial injury that resulted from the conduct that is the subject of this proceeding. According to Port of Seattle, Rule 602 requires that contested settlements cannot be certified and approved if there are material issues of fact in dispute and if there is an inadequate record upon which to resolve such disputes.

20. Port of Seattle points to the materials submitted by the California Parties in opposition to PacifiCorp's August 29, 2003 Settlement with Trial Staff (i.e., the Gaming Settlement) to demonstrate that genuine issues of material fact are in dispute, and that

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<sup>20</sup> As for the Partnership Proceeding, PacifiCorp was incorrectly named as a party in that proceeding, as discussed *supra* n.6.

<sup>21</sup> See Port of Seattle's Reh'g Request at 26.

<sup>22</sup> See Gaming Settlement paragraph 4.2.



these issues cannot be resolved without an evidentiary hearing. Port of Seattle states that the Commission erred in finding these issues to be irrelevant to the Global Settlement. Rather, Port of Seattle avers, the Commission cannot make a meaningful determination that the Global Settlement is reasonable prior to resolving these issues; nor can the Commission ignore these issues simply because one of the affidavits in which the facts are alleged was previously submitted for a different purpose.

### **Commission Determination**

21. As stated above in our discussion of Port of Seattle's request for rehearing of the Gaming Settlement, there are a variety of circumstances under which the Commission can approve a contested settlement. We incorporate by reference the circumstances listed in paragraph 12. Likewise, we reaffirm the Commission's position of being strongly in favor of settlements, particularly in cases that are highly contested and complex.<sup>23</sup> The Global Settlement resolves issues raised in Commission proceedings arising from the energy crisis of 2000-2001 that were difficult and contentious, the resolution of which will bring needed stability to the industry, end protracted litigation, and thereby benefit customers.

22. The crux of Port of Seattle's argument is that the Commission erred in approving the Global Settlement under Rule 602 because of the existence of disputes as to material facts and the inadequacy of the record to support a determination that the Global Settlement is fair and reasonable and in the public interest. In its request for rehearing, Port of Seattle once again points to the California Parties' prior pleading opposing the Gaming Settlement, but does not summarize the purported issues of fact contained in that pleading that Port of Seattle still finds relevant. Port of Seattle's position appears to be that as long as a litigant continues to press its issues, even if supported by only vague allegations of adverse impacts, genuine issues of material fact remain. However, the Commission has spoken to the issue of the application of Rules 602 in proceedings in which parties opposing a settlement allege the existence of material factual disputes. In *El Paso Natural Gas*,<sup>24</sup> the Commission stated that:

If a party's interests are not immediately and irreparably affected by approval of a settlement in a consolidated docket, the party's opposition does not create a genuine material issue. In the absence of any genuine, material issue, we can dispose of the matter before us in a summary

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<sup>23</sup> *Idaho Power*, 109 FERC ¶ 61,308, at P 5 (2004); *see also, e.g., Devon Power LLC*, 115 FERC ¶ 61,340, at P 66 (2006).

<sup>24</sup> 25 FERC ¶ 61,292 (1983).

fashion. We shall, therefore, treat this as an uncontested offer of settlement.<sup>25</sup>

Port of Seattle has not supported its assertion of the existence of material facts in dispute or that the Settlement would adversely affect its ability to continue to pursue its claims against PacifiCorp in these proceedings.

23. Having established that there are no remaining genuine issues of material fact, the Commission correctly applied its precedent in approving the Global Settlement as fair and reasonable and in the public interest. For these reasons, the Commission will deny rehearing on this issue.

### **3. Discrimination Toward Non-Settling Parties**

24. Port of Seattle argues that the settlement distributes proceeds in a manner that is discriminatory toward non-settling parties. Specifically, Port of Seattle contends that the Global Settlement's distribution of proceeds is unjust and unreasonable because the "ear-marking of the bulk of settlement proceeds to the California Parties completely ignores the fact that the conduct at issue was perpetrated from outside California, largely took place within the [Pacific Northwest], and generated substantial profits *outside* of California."<sup>26</sup> According to Port of Seattle, the allocations in the Global Settlement reflect an arbitrary and capricious "power grab" by the California Parties, intended to exclude Port of Seattle and other injured parties in the Pacific Northwest from settlement proceeds. Thus, argues Port of Seattle, the Commission erred in concluding that the right to continue litigating means that the Global Settlement cannot be discriminatory; rather, the Global Settlement is discriminatory because it allocates proceeds in a manner that is inconsistent with evidence regarding the distribution of the injury caused by the respondents' conduct.

### **Commission Determination**

25. We deny rehearing on this issue. As stated in the *Global Settlement Order*, "Clearly, the Settlement does not resolve anything as to Port of Seattle, and Port of Seattle retains its ability to pursue its claims against PacifiCorp in the underlying proceedings. Moreover, the specific terms of the Settlement make it clear that the Settlement establishes no facts or precedent as to Non-Settling Participants."<sup>27</sup> For example, section 3.2 provides that no claims addressed in the Global Settlement shall be deemed settled as to Non-Settling Participants; that defenses, claims and allegations

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<sup>25</sup> *Id.* at 61,673.

<sup>26</sup> Port of Seattle's Reh'g Request, at 29.

<sup>27</sup> Global Settlement Order, 119 FERC ¶ 61,296, at P 39.

between entities that opt to settle and Non-Settling Participants shall be unaffected by the Global Settlement; and further, that the California Utilities<sup>28</sup> shall be responsible for the payment of any refunds by PacifiCorp to Non-Settling Participants in the related Commission proceedings. Therefore, if PacifiCorp is deemed to owe refunds to any Non-Settling Participants, then Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company will be required pursuant to the Global Settlement to pay such refunds. Port of Seattle is not only free to continue litigating to recover funds for any harms it may have suffered due to PacifiCorp, but may ultimately recover such funds from certain of the California Parties if its claims are successful. In addition, section 5.6 provides that any funds allocated to Non-Settling Participants under the Global Settlement shall be held in a separate escrow account.

26. With respect to Port of Seattle's allegation that the Global Settlement is unduly discriminatory because of the amount of funds going to California interests, the Commission notes that a number of refund recipients listed in the Allocation Matrix (Exhibit A to the Global Settlement) are not California entities. Moreover, Port of Seattle has not provided evidence or explanation of the harms it has suffered due to PacifiCorp's actions, or why Port of Seattle should be entitled to settlement proceeds. Nor has Port of Seattle indicated how Commission approval of the Global Settlement prevents Port of Seattle from continued litigation to recover funds for any harms it may have suffered. Rather, Port of Seattle makes conclusory statements about the Settlement's discriminatory allocation of proceeds without providing the Commission any information or evidence in support of its claims. As the *Global Settlement Order* stated, "the Settlement is a comprehensive and reasonable effort by the Parties to end their litigation and resolve their legal disputes. Port of Seattle does not have to join the Settlement, and its right to continue to litigate is unaffected by, and in fact protected by, the Settlement."<sup>29</sup> For these reasons, the Commission will deny rehearing on this issue.

#### **4. Pending Petitions for Review**

27. Finally, Port of Seattle avers that the Global Settlement should not be approved prior to resolution of the petitions for review of the Commission orders on the scope of the *Gaming and Partnership Proceedings* because a decision in favor of the petitioners could radically expand the scope of the proceedings.<sup>30</sup> Port of Seattle states that a change in the scope of the proceedings would be material to any analysis of whether the Global

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<sup>28</sup> Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company.

<sup>29</sup> *Global Settlement Order*, 119 FERC ¶ 61,296, at P 41.

<sup>30</sup> The petitions for review are pending in the United States Court of Appeals for the Ninth Circuit.

Settlement is a reasonable resolution of the issues in dispute. Port of Seattle concludes that the Commission cannot make a rational determination that the Global Settlement is in the public interest without a final determination on the issues raised in the pending petitions for review.

### **Commission Determination**

28. We will deny rehearing on this issue. Port of Seattle has raised this same issue previously.<sup>31</sup> And, as stated previously, the Commission has approved a number of settlements that resolve outstanding challenges to settlements in the *Gaming and Partnership Proceedings*,<sup>32</sup> and the pendency of appeals does not prevent the Commission from evaluating and approving the Global Settlement. Moreover, the Global Settlement resolves claims outside of the *Gaming and Partnership Proceedings*. Port has offered no new arguments or precedent to support its assertion that the Commission cannot approve the Settlement until the Ninth Circuit has acted on the pending appeals. Therefore, the Commission finds that there is no reason to defer action on the Global Settlement.

29. For these reasons, we deny Port of Seattle's request for rehearing of the *Global Settlement Order*.

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<sup>31</sup> See e.g., *San Diego Gas & Electric Co. v. Sellers of Energy & Ancillary Serv.*, 119 FERC ¶ 61,296 (2007); *San Diego Gas & Electric Co. v. Sellers of Energy & Ancillary Serv.*, 117 FERC ¶ 61,020 (2006); *San Diego Gas & Electric Co. v. Sellers of Energy & Ancillary Serv.*, 115 FERC ¶ 61,230 (2006); *San Diego Gas & Electric Co. v. Sellers of Energy & Ancillary Serv.*, 113 FERC ¶ 61,308 (2005).

<sup>32</sup> *San Diego Gas & Electric Co. v. Sellers of Energy & Ancillary Serv.*, 108 FERC ¶ 61,002 (2004) (order accepting Williams settlement); 109 FERC ¶ 61,257 (2004) (order accepting Duke settlement); *reh'g denied*, 111 FERC ¶ 61,186 (order on rehearing of the Williams, Dynegy and Duke settlements); 111 FERC ¶ 61,017 (2005) (order accepting Mirant settlement), *reh'g denied*, 111 FERC ¶ 61,354 (2005); 113 FERC ¶ 61,171 (2005) (order accepting Enron global settlement), *reh'g denied*, 115 FERC ¶ 61,032 (2006); 113 FERC ¶ 61,171 (2005) (order accepting Enron-SRP settlement), *reh'g denied*, 115 FERC ¶ 61,032 (2006); 113 FERC ¶ 61,235 (2005) (order accepting Public Service Company of Colorado settlement); 113 FERC ¶ 61,308 (2005) (order accepting Reliant settlement); 114 FERC ¶ 61,067 (2006) (order accepting Nevada Companies settlement); 115 FERC ¶ 61,230 (order accepting IDACORP settlement), *reh'g denied*, 117 FERC ¶ 61,020 (2006); 118 FERC ¶ 61,168 (2007) (order accepting APX settlement); 119 FERC ¶ 61,092 (2007) (order accepting Eugene Water Board settlement); and, 119 FERC ¶ 61,151 (2007) (order accepting Portland General settlement).

The Commission orders:

(A) Port of Seattle's request for rehearing of the *Gaming Settlement Order* is hereby denied.

(B) Port of Seattle's request for rehearing of the *Global Settlement Order* is hereby denied.

By the Commission. Commissioner Spitzer not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.